

Partnership Agreement Template

This MSWord template is designed to be used by all Air Logistics Centers for the purpose of creating partnership agreements related to depot-level maintenance. Some portions of the template are mandatory use, designed to either establish a consistent format or include information that is HQ AFMC-approved. The up-front material in this document is intended to describe the template's use and should be removed prior to final use.

Legend

The format of this document is mandatory. All major sections, headings and paragraphs will be included. Specific content may be altered as follows;

Content that is mandatory, to be included word-for-word, is written in **normal blue**.

Content that is recommended is written in normal black.

Should additional Articles be required to detail topics specific to the partnership not anticipated by this template, they shall be added at the end of the document so as not to interfere with the existing template Articles and their order.

Should additional information be required to detail existing template Articles, sub-articles may be added as required following the last instance of any existing sub-articles so as not to interfere with the existing template Article and sub-article order.

Additional information added for clarity and understanding is written in bubble comment and should be removed from the final document.

Partnership Agreement

between

AnyCompany ABC(s)

and

Alpha Air Logistics Center(s)



Comment [jlw1]: ALC or AFMC logo

Comment [jlw2]: Prime or Company logos

XX Month Year
PA# AA-ALC-XYZ-05-001

Comment [jlw3]: The first PA between Alpha Air Logistics Center and XYZ Company signed in FY 2005 would have the document number, PA# AA-ALC-XYZ-05-001. AA-ALC is the ALC designator, XYZ is the prime contractor, 05 is the year and 001 is the first PA between the members that fiscal year. PAs between multiple ALCs will be designated PA# AF-XYZ-05-001, with AF replacing AA-ALC. PAs between multiple contractors will list only the prime, if one exists, or all if none are designated prime or lead, replacing XYZ. Revisions to PA will retain all of this document code, including the year and number. Append "-Rev-01" for the first revision so that the originating PA year is retained. [Apply to PA numbering in Footer]

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General Name/Weapon System Partnering Agreement

IN WITNESS WHEREOF, this Partnership Agreement shall be effective when executed by a duly authorized representative of each Party on the last date indicated below.

ALBERT Q. LEADER, Major General, USAF
Commander, Alpha Air Logistics Center

LENNY SQUIGGY, Vice President & Managing
Director, Focused Logistics
AnyCompany ABC

Date

Date

Comment [jlw4]: Simultaneous coordination of the PA may be necessary due to shortened timelines for completion. In that case, consolidate signature pages at the front of the PA.

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**Partnership Agreement between AnyCompany ABC Company
and
Alpha Air Logistics Center**

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ARTICLE 1 –PARTNERSHIP AGREEMENT AND OBJECTIVES

- 1.1 **Authorities:** Implementation Agreements (IAs) pursuant to this Partnership Agreement (PA or “Agreement”) may be issued in furtherance of requirements arising under one or more of the following statutory/regulatory authorities: 10 USC §2474, 10 USC §2563, 10 USC §2208(j), 22 USC §2770, 10 USC §2667, DoDI 4151.21, AFI 63-101. Property handling requirements and disposition shall be in accordance with the provisions of Federal Acquisition Regulation (FAR) PART 45. Related statutory provisions relevant to depot maintenance partnerships include 10 USC §2464 and 10 USC §2466. This Agreement supports the prime contract, [contract number], between [government organization] and [prime contractor].
- 1.2 **Background:** To ensure compliance with statutory requirements, support Source of Repair Assignment Process (SORAP) decisions, and in recognition of evolving Air Logistics Center capabilities, the United States Air Force has encouraged the AnyCompany ABC Company to engage in this PA with organic depots for sustainment of F-XX workload. This PA supports both Air Force core capability decisions and the objective to integrate Government/Contractor sustainment activities via public-private partnering arrangements and a performance-based logistics concept to improve weapon system availability, training, and reduce cost. Under this performance-based logistics concept, an entity - the Product Support Integrator (PSI) or System Program Office (SPO), retains overall responsibility for performance of the weapon system. The PSI/SPO may change over the lifecycle of the weapon system.
- 1.3 **Agreement:** This partnership agreement is a public-private agreement between AnyCompany ABC hereafter referred to as “private partner” and the United States Air Force, acting through the Alpha Air Logistics Center (AA-ALC), hereafter referred to as the “ALC”. Collectively, hereafter, all signatories to this Agreement shall be referred to as the “Parties”. Neither this PA, nor subsequent IAs executed under this PA, will be incorporated into any existing prime contracts. Such prime contracts that relate to or are supported by this PA shall include a special clause (normally in section H) to acknowledge existence of this PA and subsequent IAs as a means of furthering the objectives of the prime contract. The Parties are committed to close and continuing cooperation, mutual support through shared information and expertise and dedication of skills and resources to continuous innovation and process improvement to faithfully execute their responsibilities under this PA. The Parties intend for this partnering relationship to successfully integrate efforts to continuously improve support of the F-XX Weapon System, while providing best value to the Air Force.
- 1.4 **Purpose:** This PA is the foundation for future IAs and provides overarching terms and conditions for a long-term, public-private partnering approach necessary to implement the long-term support concept directed by SAF/AQ and SAF/IEL. As such, this PA is written to allow implementation for workshare, direct sales, leasing activity and other implementation methodologies. This flexibility will allow the Parties to determine, thru mutual agreement, the actual funding mechanism as appropriate to the nature of the workload or sustainment strategy used to support

the weapon system. Upon concurrence of the parties, and in keeping with Article 14 of this Agreement, this document may be amended to permit the flexibility needed to accomplish the intent of this Agreement.

1.5 Goals: The shared goals of this PA are to:

- a) Improve the efficiency and effectiveness of operations at a Center of Industrial and Technical Excellence
- b) Improve the support provided by the Centers for the armed forces user of the services of the Centers
- c) Enhance readiness by reducing the time that it takes to repair equipment
- d) Sustain a positive return on investment
- e) Leverage opportunities for future business partnerships
- f) Provide more responsive, timely, reliable support to warfighter
- g) Sustain parts availability, reduce repair cycle times, enhance readiness
- h) Sustain the Core capabilities of the Center
- i) Reduce the cost of DoD parts and services produced or maintained at a Center
- j) Reduce the DoD cost of ownership, in operations and maintenance, and environmental remediation
- k) Improve the use of available organic capability, facilities and equipment
- l) Leverage private sector investments to re-capitalize depot maintenance activities
- m) Enhance the industrial base to improve and sustain manufacturing and repair capabilities, both organic and private
- n) Introduce improved business practices and updated technology to DoD maintenance operations and products
- o) Improve Air Force 50-50/Core posture
- p) Foster cooperation between the ALC and private sector partner.
- q) Identify and/or develop technology for use by the Parties.
- r) Facilitate innovation and transformation by identifying potential projects and target areas for improvement and opportunities.
- s) Leverage the synergy created by public and private capabilities and collaboration.
- t) Enhance the Parties' business vitality by providing additional business opportunities.
- u) Cooperatively develop IAs that support these goals and objectives.

1.6 Cooperative Activities: The following is a non-exclusive list of potential cooperative activities and services.

- a) New manufacturing
- b) Repair
- c) Supply
- d) Research and Development
- e) Data Design and development of technical orders and drawings
- f) Technology Infusion
- g) Management and Process Improvement
- h) Engineering
- i) Workforce Development

- j) Training
- k) Test and Evaluation
- l) Software Engineering
- m) Aircraft modifications and upgrades
- n) Infrastructure investment
- o) Strategic Planning and Forecasting

ARTICLE 2 – LIMITATIONS AND ASSUMPTIONS

2.1 Organizational Relationship: This PA does not constitute a commitment regarding any procurement, program, solicitation, request for proposal and/or business activity. This PA neither constitutes nor creates a joint venture, a partnership under state law, or formal business organization of any kind wherein two or more parties share profits and losses and either party can bind the other party. Nor does it create a contract to perform work, or a subcontract to perform work, among or between the Parties or any other enforceable contractual relationship between the parties. These types of relationships must be formalized in subsequent IAs.

2.1.1 Exclusivity: Nothing in this agreement shall be deemed to create an exclusive relationship between the Parties except for work that becomes part of an IA (with exceptions for third parties per 2.1.2 below), or preclude the Parties from entering into other partnering arrangements. All industry partners that may eventually enter into a partnership agreement with the ALC will receive equal referral considerations from the Government activities involved. The Agreement will not preclude the ALC's ability, without consequence, to approach DoD buyers and program managers with alternative approaches that may be determined in the best interest of the Government. The ALC reserves the right of refusal to submit an offer in response to any request the contractor may submit to the ALC under this Agreement.

2.1.2 Third Party Involvement in an Implementation Agreement: In the event, any Party encounters another potential third party that will provide significant technical and/or logistics expertise related to an IA requirement, the terms of participation will be defined in the individual IA with written approval from all Parties that are to sign the IA.

2.2 Resources: Each party will bear all costs, risks and liabilities incurred by it in the development, submission and maintenance of this Agreement, whether or not a prime contract is subsequently awarded to AnyCompany ABC Company as part of a performance-based logistics agreement.

2.3 Commitments: The AnyCompany ABC Company and the ALC shall remain as independent entities at all times, and no Party shall act as an agent for the other. Nothing in this PA shall grant, to either party, the right to make commitments of any kind for or on behalf of the other party without the prior written consent of the other party.

Comment [jlw5]: HQ AFMC is researching a question concerning 3rd party privacy that may affect the wording for this paragraph. Until a conclusion is reached, consider the wording in this paragraph as recommended, but not mandatory.

- 2.4 **Financial:** The creation of (or signature to) this PA does not involve the obligation of funds. Details concerning funding and funding procedures for public and private sector work will be included in IAs under this PA.

2.5 **Buying Supplies or Services:**

2.5.1 The private sector party may provide services, supplies or equipment to support work completion by the ALC at either no charge or for “in-kind” compensation (i.e., facility use, equipment use, technical support, engineering support, etc.) under this Agreement.

2.5.2 If the ALC is required to purchase supplies or services, the ALC must do so using contracting procedures under the Federal Acquisition Regulations and Competition in Contracting Act. Purchases cannot be accomplished directly under this Agreement.

- 2.6 **Leases as Part of Agreements:** Facility and equipment leases associated with this PA and any IAs must comply with the specific provisions detailed within the statutory language under which the lease is accomplished.

- 2.7 **Governing Law:** This PA shall be governed and interpreted only in accordance with Federal Law, Air Force Instructions and applicable DoD, Air Force, and AFMC policy with no consideration given to its conflict of laws or rules, regardless of the place of execution or performance of this PA.

2.7.1 **Compliance with 10 USC §2464 and §2466:** All work accomplished under this PA and any subsequent IAs shall not interfere with government compliance of core workload and percentage limitation requirements.

2.7.2 **Compliance with Export Laws:** Information exchanged under this Agreement may be subject to United States export control laws and regulations under the Arms Export Control Act (AECA) (22 USC § 2778). The private sector partner is solely responsible for complying with all applicable United States export control laws and regulations for information subject to the export control laws and regulations. Notwithstanding any other clause in this agreement, this agreement does not in any way authorize the export of any defense articles or defense services (including information or technical data) nor does it in any way authorize or approve an exemption to the export licensing requirements of the International Traffic in Arms Regulation (ITAR). If the customer or ALC wishes to export any deliverable provided under this agreement or derived from any deliverable (e.g. know how), then it must first obtain an export license.

2.7.3 **Foreign Interest Disclosure:** Policy implementing the AECA requires that the Department of the Air Force be aware of any workload related to this Agreement that may implicate United States export control laws. If the private sector partner is performing work related to this Agreement for a foreign company, the private sector partner must certify that: (1) the United

Comment [jlw6]: If a lease agreement is intended to be part of a PA (as an IA) then language must be included throughout the PA that addresses Leases. The language may reference the IA as the source for detailed information related to the lease. However, general language must be included in the PA that indicates a lease is envisioned and what the parties agree to in relation to that lease.

A future version of the guidebook may provide more mandatory language concerning leases as part of PAs.

States' portion of the total work is of material significance; (2) the work with the foreign company involves meaningful contributions from both the Customer and foreign company; and, (3) the work does not merely represent a "pass through" of services from the United States to a foreign entity.

- 2.8 Flow Down:** Federal Acquisition Regulations (FAR) and Defense Federal Acquisition Regulation Supplements (DFARS) flow down clauses from any prime contract that the private sector partner may hold for which these supplies or services may be needed do not apply to the ALC, a public entity.
- 2.9 Waiver and Severability:** Any action or inaction by the Parties or the failure of the Parties, on any occasion, to enforce any right or provision of any IA adopted under this PA shall not be construed to be a waiver by the Party of its rights hereunder or thereunder, and shall not prevent the Party from enforcing such provision or right on any future occasion. A determination that any portion of an IA issued hereunder is unenforceable or invalid shall not affect the enforceability or validity of any of the remaining portions of the IA. In the event that any part, term, or provision of an IA issued hereunder, is determined unenforceable, invalid, or in violation of applicable law or regulation, the Parties agree to include a replacement provision, construed to accomplish its originally intended effect that does not violate such law or regulation.
- 2.10 Classified Information:** To the extent the obligations of the Parties hereunder involve access to security information, classified U.S. Government "Confidential" or higher, the provisions of applicable Government regulations and the F-XX Program Security Classification Guide attached to the prime contract shall apply.

ARTICLE 3 – TERM AND TERMINATION

- 3.1 Term:** The term of this PA begins upon execution of the PA. The intended term of this PA is for the life of the F-XX system or until the goals, purposes, and use are completed. This PA may be terminated upon the mutual agreement of the parties in writing.
- 3.2 Terminations:** As long as there are any executory IAs issued hereunder, neither party has a unilateral right to terminate this PA (except as detailed in paragraph(s) 3.2.1, 3.2.2, 3.2.3 below). If there are no executory IAs hereunder, either party may unilaterally terminate this Agreement at its sole discretion with 30 days advance written notice to the other party.
- 3.2.1 Public Exigency and Mission Priority:** The ALC/CC may, upon the existence of a public exigency or mission priority, direct the immediate Termination of work being accomplished at the ALC.
- 3.2.1.1 Relief Under Agreements With a Prime Contract:** Such occurrence shall be treated as a unilateral change by the Government and the AnyCompany ABC Company shall have all

Comment [jlw7]: The term of a PA should be tailored to support the needs of the partnered relationship. In general, the term should be limited to the expected period of mutual benefit. Smaller PAs would be limited to defined periods of time IAW the expected work. Broader PAs would run coincident with the prime contract supported or the expected period of relationship envisioned by the document's signatories. Draft exact wording to support the PA concept.

Comment [jlw8]: The remainder of this paragraph needs to detail the rights of the private partner should public exigency or mission priority result in cost, schedule or quality impacts to the private partner. In most situations, the partner will seek relief from performance through the program office and the prime contract. When those do not exist, an alternative method must be agreed upon.

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of the rights afforded a Government contractor similarly situated in accordance with the applicable clauses set forth in the underlying Government prime contract. Notwithstanding this occurrence, the AnyCompany ABC Company shall remain responsible for performance of the underlying Government prime contract.

- 3.2.1.2 Relief Under Agreements Without a Prime Contract:** If the ALC believes that it will not be able to meet the requirements under an IA due to public exigency or mission priority changes, the ALC agrees to promptly inform the AnyCompany ABC Company. The ALC shall be provided schedule and cost relief from the consequences thereof. In this event, the private partner has the option to remove work pursuant to the termination. For Core workloads, removal of work is subject to the approval of the appropriate Government authorities. The Parties will work together to determine potential remedies, with the goal of returning to the objectives set forth in this PA.

- 3.2.2 In Cases Where Contractor Retains Right to Unilaterally Terminate:** The private partner agrees that the Government may elect to provide its products and services as GFS/S. If such election is exercised, the affected prime contract shall be modified to delete the affected workload, together with the associated price adjustments.

- 3.2.2.1** The contractor shall not deem any such modification to be an unreasonable interference with the prime contractor's performance.

- 3.2.2.2** The prime contractor shall continue to provide integration management, oversight, and recommendations to the Prime Contracting Officer (PCO) for any actions as may be required to mitigate reasonably foreseeable ALC production shortfalls.

- 3.2.3 Termination of Leases Under 10 USC §2667:** The ALC/CC may terminate the lease at any time.

- 3.2.3.1** The lease may provide the lessee first right to purchase, if the lease is revoked to permit the U.S. to sell. The further provisions of 10 USC §2667 must be met in this case.

Comment [jlw9]: If a lease is created under 10 USC 2667, this wording is mandated by statute. The paragraph may be omitted if no 10 USC 2667 leases are created.

- 3.3 Work in Process:** Workloads identified in associated IAs, which have not been delivered in accordance therewith, may be terminated in a manner set forth in the IAs. Otherwise, in the event either Party may require a termination of an IA prior to completion for reasons other than the existence of a public exigency or mission priority, the party seeking termination shall provide written notification to the other party. Thereupon the parties shall negotiate the costs to the terminated party. Failure to agree upon a termination settlement shall be resolved in accordance with Article 15, Resolution of Disputes and Agreements, and any applicable terms within the affected IA. In the event an IA is terminated, the ALC shall be entitled to

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retain the previously established unit cost of any completed items of work delivered and accepted, the cost of work in process performed, and any costs directly caused by the termination.

- 3.4 Stop Work:** The AnyCompany ABC Company may, as a result of a stop work order, require the ALC to stop all, or any part, of the work called for by an IA for a period of 90 days after the order is delivered to the appropriate ALC contact, or for any further period to which the Parties may agree. The order shall be specifically identified as a stop-work order. Each stop-work order shall specifically identify the IA or IAs, by assigned control number, for which work is to stop. The ALC shall continue work on all IAs not specifically cancelled. Upon receipt of said order, the ALC shall immediately comply with the terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by said order during the period of work stoppage. Within a period of 90 days after a stop-work order is delivered to the ALC, or within any extension of that period to which the Parties will have agreed, the AnyCompany ABC Company shall either cancel the stop-work order or engage the ALC in termination discussions.

3.4.1 If a stop-work order is canceled or the period of the order or any extension thereof expires, the ALC shall resume work. The AnyCompany ABC Company shall make an equitable adjustment in the delivery schedule or IA price, or both, and the IA will be modified by bilateral modification.

3.4.2 If a stop-work order is not canceled and the work covered by the order is ultimately terminated, the AnyCompany ABC Company shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

ARTICLE 4 – ROLES AND RESPONSIBILITIES

- 4.1 Executive Administration:** The ALC representative (AA-ALC Center Business Office) and the private sector partner representative (Vice President & Managing Director, Focused Logistics) will serve as the executive administrators of this partnership. Their responsibilities include but are not limited to providing resources to implement and manage PAs and IAs as detailed in paragraph 4.1.1.

4.1.1 Responsibilities: Utilizing an IPT approach, the Executive Administrators shall

4.1.1.1 Keep each other informed of all communications between PA stakeholders regarding any issues impacting the PA and its IAs.

4.1.1.2

- 4.2 Weapon System Program Office:** The ALC representative (AA-ALC Center Business Office) and the weapon system program office representative (F-XX program manager) shall be responsible for integrating sustainment issues between their organizations. Their responsibilities include but are not limited to providing resources to implement and manage PAs and IAs as detailed in paragraph 4.2.1.

Comment [jlw10]: Provide additional paragraphs detailing the agreed upon responsibilities of the executive administrators of the agreement.

Comment [jlw11]: If a program office is involved as a stakeholder with the PA, then their responsibilities should be agreed to and documented. It is not necessary for the PA to be signed by the program office to enforce the responsibilities. However, if that is necessary, then include the program office as a signatory.

4.2.1 Responsibilities: Utilizing an IPT approach, the weapon system program office representative shall

4.2.1.1 Negotiate, award, fund, and provide Government oversight and administration of prime contracts for system sustainment.

4.2.1.2 Serve as the primary focal point for the F-XX customers.

4.2.1.3 Initiate and coordinate the Source of Repair Assignment Process (SORAP).

4.2.1.4 Establish Depot Maintenance Activation Working Group (DMAWG), to assist in depot activation.

4.2.1.5

Comment [jlw12]: Provide additional details by paragraph as required. It is anticipated that additional paragraphs will be required to detail program office responsibilities.

4.3 AA-ALC: The ALC representative (AA-ALC Center Business Office) shall be the single point of contact for the AA-ALC and shall

4.3.1 Responsibilities: Utilizing an IPT approach, the weapon system program office representative shall

4.3.1.1 Cooperate with the AnyCompany ABC Company and weapon system program office to develop the work requirements, provide the associated estimates, and to develop innovative partnering arrangements.

4.3.1.2 Ensure capacity, capability, and performance of the workload described in the IA with applicable requirements and specifications.

4.3.1.3 Provide information/data as requested by the program office or System Sustainment Manager (SSM) for SORAP requirements.

4.3.1.4 Continue to increase weapon system availability through improved processes and process flow, recommending new or better repair processes, and to provide a source for implementing system design changes in order to help achieve improved weapon system reliability, maintainability, and supportability.

Comment [jlw13]: This list is not considered to be a complete listing of responsibilities. Additional paragraphs may be required to fully detail.

4.4 Contractor: The private sector partner representative (Vice President & Managing Director, Focused Logistics) shall be the single point of contact for the AnyCompany ABC Company concerning this partnership agreement. The AnyCompany ABC Company shall

4.4.1 Responsibilities: Utilizing an IPT approach, the contractor representative shall

Comment [jlw14]: This list is not considered to be a complete listing of responsibilities. Additional paragraphs may be required to fully detail.

- 4.4.1.1 As the prime contractor, be responsible for ensuring the F-XX support structure meets those requirements specified in the prime contract.
- 4.4.1.2 Provide clear requirements, specifications, and all other data necessary consistent with Articles ~~XX~~ for ALC performance of partnered tasks provided through an issued IA.
- 4.4.1.3 Provide information/data as requested by the weapon system program office for SORAP requirements.
- 4.4.1.4 Not be responsible for performance of government work assigned under a workshare, although the government may separately purchase additional private sector support for this work. The contractors shall be responsible to provide support/services necessary for the ALCs to perform the workshare effort if these services are funded and included in the prime contract.

Comment [jlw15]: Detail the appropriate Articles that provide requirements, specifications and other data required for successful ALC performance.

ARTICLE 5 – IMPLEMENTATION AGREEMENTS

- 5.1 **Objective:** The objective of an IA is to identify, collaborate, and agree upon the specific work to be performed and completed. The IA is a binding agreement between the Parties concerning the specific manner in which work will be identified, estimated, activated, initiated, administered, and performed.
- 5.2 **Issuance of IA:** Any Party to this PA may propose the creation of an additional IA to perform types of work beyond the scope of existing IAs. Each IA under this PA will reference this PA and incorporate the terms hereof.
- 5.3 **IA Numbering:** The IA number is preceded by the PA number and consists of the ALC and a consecutive number representing a consecutive count of IAs with a particular private party. Thus IA number 1 for FY05 would be AA-ALC-XYZ-05-001-AA-ALC-IA001. Note that AA-ALC-XYZ-05-001 is the PA number and that the ALC designator for this section may be different than that shown for the IA in the case of multi-depot PAs. AA-ALC- IA001 is the first IA between the parties for the fiscal year. Revisions to IA will retain all of this document code, including the year and number. Append “-Rev-01” for the first revision.
- 5.4 **Funding Plan:** Not later than the beginning of the second quarter of each fiscal year (FY), the IPTs will develop requirements and estimates for the follow-on period and adjust requirements and estimates for the following three consecutive FYs. The AnyCompany ABC Company will be responsible, with ALC assistance, for providing the necessary long-range budgetary forecast for the basic year plus three additional years as necessary for ALC maintenance long-range forecasting.
 - 5.4.1 **Advanced Funding Payment:** In accordance with DoD Financial Management Regulation 7000.14-R, the AnyCompany ABC Company shall provide advance funding to the ALC for the scope of work to be

Comment [jlw16]: Each PA will establish the basic funding plan necessary to allow AF planning, programming and budgeting

accomplished in the IA(s). The ALC shall not commence work prior to receipt of sufficient payment to cover the cost of performance.

5.4.1.1 Workshare: Funding will come directly to the ALC accompanying a purchase order through regular Government channels, made payable to AA-ALC, and will include the IA number of the agreement. The purchase order is a specified work action outlined in an IA.

5.4.1.2 Direct Sales: The AnyCompany ABC Company will issue a check made payable to the "U.S. Treasury", along with a purchase order directly to the ALC. The check and purchase order will include the IA number of the agreement. Incremental funding may be permitted in appropriate circumstances if the increment is sufficiently funded. Under the Prime Contract, the Contracting Officer will consider payments made by the AnyCompany ABC Company to an ALC as expenditures and not as contract financing payments.

5.4.1.3 Lease: Funding may be given in check made payable to the "U.S. Treasury" or in the form of payment in kind, which will be specified in the IAs.

5.5 Access to Facilities: ALCs and private companies associated with this PA will furnish reasonable access to facilities for the purpose of providing technical assistance or support as required in performance of an IA. Any specific facility requirements will be negotiated within each IA.

ARTICLE 6 – CONTRACTING OUT

6.1 Contracting Out: Any incidental portions of the workload that the ALC plans to contract out shall be clearly reflected during IA discussions and documented in the IA.

6.2 Unusual Temporary Circumstances: If the ALC determines that it must contract out part of its work assignment under an IA, the ALC will nonetheless remain responsible for the performance of the IA. The ALC shall notify the AnyCompany ABC Company and Program Office, as appropriate, of temporary circumstances and potential consequences at the first available opportunity.

ARTICLE 7 – QUALITY STANDARDS AND COMPLIANCE

7.1 Quality Standards: In performing its workloads under this PA, the ALCs are required to comply with the then-current policies of the Air Force Materiel Command (AFMC). If the quality standards change, the work will be accomplished in accordance with the new standards. If these changes result in additional costs to the ALCs, the ALCs may submit a request for reimbursement of the increased costs. Any subsequent dispute will be resolved in accordance with Article 15,

Comment [jlw17]: HQ AFMC is currently working an unresolved issue to determine exactly what is meant by "receipt of sufficient payment". A future version of the guidebook may alter this wording to add clarity. Consider this wording mandatory.

Comment [jlw18]: Or U.S. Treasury, depending upon ALC FM guidance.

Comment [jlw19]: HQ AFMC FM is currently examining a concern related to contracting out that details procedures for 3rd party privacy. Future versions of the guidebook may alter the wording for this paragraph. Specific wording may be developed by the ALC, as this section has no mandated text.

Resolution of Disputes and Disagreements. AA-ALC does not take responsibility for the accuracy of information provided by the AnyCompany ABC Company.

- 7.2 ALCs' Quality:** The ALCs' Quality Assurance program implemented under AFMCI 21-115, "Depot Maintenance Quality Assurance" meets the intent of the American National Standards Institute/American Society for Quality Control. Maintenance training and production acceptance certification for the ALC is implemented under AFI 21-101, "Aircraft and Equipment Maintenance Management." Evaluation of assets for production quality deficiency reporting is implemented under Technical Order 00-35D-54, "USAF Production Deficiency Reporting and Resolution."
- 7.3 Quality Standards Compliance:** Should questions arise regarding an ALC's compliance with AFMC quality standards, the ALC will cooperate with the AnyCompany ABC Company to review quality performance and processes, provide information and/or take specific corrective action(s) as may be required.
- 7.4 Contractual Compliance:** In the event the program office questions compliance of ALC quality standards with Air Force standards for ALC activities, the ALCs agree to cooperate with the AnyCompany ABC Company and the SPO to review quality performance and processes, provide information, and/or take corrective action as may be required.
- 7.5 Quality Records:** The AnyCompany ABC Company may request, in writing, access to ALC quality records. Following the request the ALC will provide access to the AnyCompany ABC Company within 15 days of records release approval.
- 7.6 Software Development Quality Standards:** AA-ALC adheres to the Software Engineering Institute's (SEI) Capability Maturity Model (CMM) for software development. An integral component of this model includes software quality assurance. The SEI CMM is the DOD-mandated standard model to be used in assessing the maturity of an organization's software development processes, testing processes, quality assurance processes, configuration management processes, etc.
- 7.6.1** AA-ALC has recently been assessed as CMM level 5. The ALC will follow Depot-developed quality assurance processes which strictly follow the Quality Assurance requirements of the CMM.
- 7.6.2** AA-ALC Software Quality Assurance will conduct periodic software project audits and will provide the AnyCompany ABC Company any results the government determines may improve partnership performance. Article 17 details audit and oversight as it relates to this agreement.

ARTICLE 8 – WARRANTY

- 8.1 ALC Work:** The ALC warrants the services performed and the goods provided, under an IA, comply with the work descriptions, specifications, and technical or data packages whether attached or incorporated by reference to an IA. ALC

liability is limited to the government's correction of material and workmanship defects and is limited to the cost of government rework. Material and workmanship discrepancies related to the private sector partner furnished property are not warranted by the ALC.

8.1.1 Unless the ALC determines rework, repair, or replacement by another organization is in the best interest of the Government, the ALC agrees to be liable for the cost of:

8.1.1.1 Government rework of deficient or non-compliant ALC performance,

8.1.1.2 Government repair of government damage to private sector partner's piece parts,

8.1.1.3 Government replacement of partner piece parts lost by the ALC.

8.2 **Exceptions:** The warranty provided by ALC may be modified as provided in an IA. The ALC provides no warranty for sales under 22 USC §2770.

8.3 **Actions that Void Warranty:** Any corrective action(s) unilaterally undertaken by the private sector partner to correct a workmanship defect shall be solely at the private sector partner's expense and shall void the ALC warranty.

8.4 **Reporting and Corrections:** Warranty claims to be considered by the ALC must be received by the ALC within twelve (12) months from the date of acceptance, in the case of supplies, and within twelve (12) months from acceptance of services by the AnyCompany ABC Company or its designated representative. Such acceptance shall not be unduly delayed. The ALC shall determine its responsibility for warranty correction and the appropriate means for corrective action, within 60 days of receipt of a notice of a warranty claim.

8.5 **Dispute:** Failure of the parties to agree on responsibility for the corrective action shall be a matter for resolution in accordance with the Article 15 Resolution of Disputes and Disagreements. If AnyCompany ABC Company requires the ALC to perform corrective action prior to resolution of the dispute, then such corrective action shall be considered new work and advance payment shall be required, unless adequate unliquidated prior funding remains available. In the event the outcome of a dispute is in the favor of AnyCompany ABC Company, the ALC shall offer a credit for the amount due as one alternative remedy.

ARTICLE 9 – LIMITATION OF LIABILITY

9.1 **Liability/Hold Harmless for Damage to Property:** Except as provided in Article 11 herein, regardless of who may have caused the damage, each party shall be responsible for any damage that may occur to its real and/or personal property associated with and used for the accomplishment of this PA and related IAs. Each party shall hold the other party harmless for any damage that may occur to its real

Comment [jlw20]: HQ AFMC policy is to not accept any PA in which the industry member is unwilling to hold the government harmless concerning damage to property or liability for consequential, incidental or special damages. This policy does not preclude partnerships with members not under DoD contract, but does require the PA to subsequently be drafted such that the industry member agrees to hold the government harmless. Any exceptions to this policy must be approved by HQ AFMC.

Comment [jlw21]: Detail the Article numbers that list exceptions to this paragraph

or personal property used for or associated with the accomplishment of this PA or related IAs. [Alternative language required for agreements under 22 USC §2770 - Each party shall hold the other party harmless for any damage that may occur to its real or personal property used for or associated with the accomplishment of this PA and related IAs.]

- 9.2 **Limitation on Liability:** Except as provided in Article XX herein and notwithstanding any other article in this PA, in no event shall either party hereto be liable to the other party for consequential, incidental, or special (including multiple, or punitive, or other indirect) damages claimed to be incurred by the other party, whether such claim arises under contract, tort (including strict liability) or other theory of law. Except as may be otherwise expressly provided for in this PA or related IAs, the private sector partner must seek cost, schedule and other relief at the prime contract level for ALC performance failures alleged to negatively impact performance of the prime contract. [Alternative language required for agreements under 22 USC §2770 - in no event shall either party hereto be liable to the other party for consequential, incidental, or special (including multiple, or punitive, or other indirect) damages claimed to be incurred by the other party, whether such claim arises under contract, tort (including strict liability) or other theory of law.]

Comment [j1w22]: Detail the Article numbers that list exceptions to this paragraph.

ARTICLE 10 - INDEMNIFICATION

- 10.1 **Indemnification for Damages and Injuries:** The Private Sector Partner agrees to hold harmless and indemnify the United States Government against all suits, actions, claims, costs or demands for death, personal injury or property damage (other than property damage covered in Article 9 above) to which the United States Government may be subjected, to the extent that such death, personal injury, or property damage is attributable to the negligent acts or omissions of the Private Sector Partner or its agents, employees, or subcontractors arising out of or in the performance of this PA. The Government shall notify the Private Sector Partner as soon as practicable of any liabilities for which the Government intends to seek indemnification under this subparagraph. The Government shall obtain the Private Sector Partner's written approval prior to assuming any obligation or making any concession relative to any liability covered by this indemnity. This indemnification does not apply to acts of the government, its agents, employees, or subcontractors that are determined to be the result of gross negligence, willful and wanton misconduct, or that may be the subject of a Federal Tort Claims action or other waiver of sovereign immunity. [Alternative language required for agreements under 22 USC §2770 - The Private Sector Partner agrees to hold harmless and indemnify the United States Government against all suits, actions, claims, costs or demands for death, personal injury or property damage (other than property damage covered in paragraph 14.1, above) to which the United States Government may be subjected.]
- 10.2 **Indemnification for Violation of Laws:** Both parties recognize their responsibility to comply with all applicable state and Federal laws, executive orders, rules and regulations. Therefore, in addition to the provisions of 10.1 the Private Partner agrees to indemnify the ALC against any and all liability that it incurs arising out of

Comment [j1w23]: HQ AFMC policy is to not accept any PA in which the industry member is unwilling to indemnify the government against suit, claims, costs or demands attributable to the industry member. This policy does not preclude partnerships with members not under DoD contract, but does require the PA to be subsequently drafted such that the industry member agrees to indemnify the government.

or in the performance of this PA as a result of the Private Sector Partner's violation of any Federal, state, or local laws, rules or regulations, to include but not limited to environmental, occupational safety, and labor laws.

ARTICLE 11 – GOVERNMENT USE OF CONTRACTOR-OWNED PROPERTY

11.1 Contractor-Owned Property: The AnyCompany ABC Company may provide Contractor-owned property to the government, including but not limited to direct and indirect material, tools, patterns, and equipment as necessary to perform IA requirements under this PA. This PA establishes accountability requirements for Contractor-owned property that has been or may be placed in the government's possession and/or control for the exclusive purposes described in this PA. The government agrees not to use Contractor-owned property, nor the designs, drawings, specifications, or other information received herein for any other purposes without prior written consent by the authorized Contractor's representative. Should written approval be granted for use on other workloads, the workloads for which the equipment was originally intended will take production priority. Title to the subject property does not transfer as a result of change in possession. Contractor-owned material or replacement material will be returned in the form of products (except that which become normal scrap or industrial waste) or unused material. The property shall not be transferred, destroyed, modified, or otherwise disposed of without prior written authorization from the Contractor's representative. The Contractor shall obtain/provide an initial AF-METCAL certification for all appropriate equipment upon installation and shall provide documents/directions for the re-calibration process and intervals, as required by the AF-METCAL program. Items provided directly from the SPO to the government as Government-furnished Equipment (GFE) are not subject to the provisions of this clause.

11.2 Government Inspections and Loss, Damage, or Destruction Reports: The government shall inspect any such material furnished by the AnyCompany ABC Company and shall have the right to reject nonconforming material upon inspection. Nonconforming materials accepted by the government shall not excuse performance in strict accordance with the applicable specifications, unless such nonconformance could not be discovered by a reasonable inspection. The government agrees to promptly report, in writing, all incidents of loss, damage, or destruction of the subject property to the Contractor's Representative. Loss, Damage, or Destruction (LDD) reports shall contain the following factual data as to the cause and circumstances surrounding the incident:

11.2.1 Document number for which the property is accountable.

11.2.2 Property identification number and description of property, (e.g., part number, serial number, tool number, etc.).

11.2.3 Acquisition cost of the property, if known.

11.2.4 Date, time, and location of incident/discovery.

11.2.5 Known interests in and commingled property of which the LDD is/was a part.

11.2.6 Estimated scrap proceeds, when applicable.

11.2.7 Actions to prevent recurrence or repetition of similar incidents.

11.3 Property Accountability: The government agrees to maintain appropriate ownership identity of the subject property, maintain accountability records, and periodically report inventory of subject property in accordance with sound business practices. The government agrees to notify the Contractor's representative immediately when the subject property will no longer be required and request disposition instructions from the Contractor's representative. During the period of performance, the government will keep all property furnished by the Contractor, and all Government property as may be identified elsewhere in this PA to which the Contractor is accountable, segregated and clearly marked and will maintain a complete inventory thereof in accordance with approved property management system in effect at the government facility at the time. Except for property incorporated in delivered end products, the government will, upon termination or completion of this work effort, deliver property, as directed by the Contractor, in good condition, subject to ordinary wear and tear and normal manufacturing losses.

11.4 Shortages, Loss, Damages, or Destruction: Except as otherwise provided in an IA, the government may be liable to the AnyCompany ABC Company for shortages, loss, damages, or destruction of property owned by the private partner. In the event the Parties cannot agree upon the level of liability if any, then it shall be resolved under Article XX, Resolution of Disputes and Agreements.

ARTICLE 12 – INTELLECTUAL PROPERTY

12.1 Government Intellectual Property: AnyCompany ABC Company has agreed that the AA-ALC may create for AnyCompany ABC Company, software programs including (without limitation), programming, corrections, enhancements, improvements, translations, updates or upgrades, and any other derivative work or collective work created for or delivered to AnyCompany ABC Company under this Partnering Agreement ("Work Product"). To the extent that the Air Force owns or has any rights in any works or intellectual property rights that are used, embodied or reflected in the Work Product, the ALC hereby grants to AnyCompany ABC Company, its successors and assigns, an irrevocable, perpetual, nonexclusive, worldwide, royalty-free license to use, execute, reproduce, display, and perform the Work Product, to prepare derivative or collective works based upon or containing the Work Product, to distribute the Work Product (including any derivative or collective works prepared pursuant to such authorization), and to authorize others to do any or all of the foregoing. Such license granted to AnyCompany ABC Company shall include a license to copy and display all pictorial, graphic or audiovisual works created as a result of execution of the Work Product, even if

Comment [jlw24]: In general, Article 9 holds that the individual members are responsible for their own damages. If specific instances exist wherein the members agree to bear responsibility for shortages, losses, damages or destruction then the details will either be explicitly stated here or referenced in the IA.

HQ AFMC policy is to not accept any PA in which the industry member is unwilling to hold the government harmless concerning damage to property or liability for consequential, incidental or special damages. This policy does not preclude partnerships with members not under DoD contract, but does require the PA to subsequently be drafted such that the industry member agrees to hold the government harmless. Any exceptions to this policy must be approved by HQ AFMC.

such pictorial, graphic or audiovisual works are created by or with other programming or through other means. The ALC agrees, at the request of AnyCompany ABC Company, and at AnyCompany ABC Company's expense, to perform any acts and execute any further assignments or acknowledgments that AnyCompany ABC Company may reasonably deem necessary. In the event that the Parties agree that the ALC will perform other work which will result in the development, creation, or modification of intellectual property, the Parties agree to enter into an appropriate agreement or modify this PA to address their rights and duties with respect to such intellectual property. Nothing in this clause may be interpreted to limit any Government intellectual property rights specified in the prime contract

ARTICLE 13 – NON-PERFORMANCE BY PARTNERS

- 13.1 **General:** Non-performance by either party shall require the parties to collaborate, quickly identify, and correct the non-performance problems and re-establish the IA's capabilities. Examples of these collaborative efforts are: root cause investigation, process improvements, supply chain analysis and application (bit and piece support), and/or Corrective Action Plans. Remedies may include the AnyCompany ABC Company's timely accomplishment of support responsibilities for the ALC, ALC acceleration, and other possible alternatives or corrective actions deemed necessary to meet program requirements. In the event a remedy cannot be found, resolution will be made utilizing Article 15, Resolution of Disputes and Disagreements.
- 13.2 **Required Performance:** The ALCs shall perform designated work upon receipt of funds as authorized by each IA. The private partner shall perform and make available designated work in accordance with the provisions of its contract with the government and of IA(s) written under this PA.
- 13.3 **Consequences for Non-performance:** Except as agreed to herein, details concerning consequences for non-performance are contained within the IA(s).
- 13.3.1 **Non-performance by AA-ALC:** The private partner shall be entitled to
- 13.3.2 **Non-performance by AnyCompany ABC Company:** The ALC shall be entitled to
- 13.4 **Direct Sales:** Appropriate quality, cost performance and schedule relief to the AnyCompany ABC Company, should the ALC fail to properly or timely perform the work issued to it under an IA, will be detailed in Section H of the prime contract. In the event this PA does not support a government contract, the private partner agrees to hold harmless and indemnify the United States for all consequential, incidental, or special (including multiple, or punitive, or other indirect) damages that are claimed to be incurred by the other Party due to non-performance.
- 13.5 **Workshare:** Appropriate quality, cost performance and schedule relief to the AnyCompany ABC Company, should the ALC fail to properly or timely perform the work issued to it under an IA, will be detailed in Section H of the prime contract. In

the event this PA does not support a government contract, the private partner agrees to hold harmless and indemnify the United States for all consequential, incidental, or special (including multiple, or punitive, or other indirect) damages that are claimed to be incurred by the other Party due to non-performance.

13.6 **Lease Agreements:**

ARTICLE 14 – CHANGES

14.1 Mutual Agreement: At any time, either party may submit to the other, proposed written changes to this PA and/or an IA. No changes to these Agreements will be made without the prior written consent of the PA executive administrators. The executive administrators are responsible for acquiring approvals from the PA signatories or their replacements in accordance with the policies established within their organizations. Changes to IAs that alter the approved scope of work require re-approval supported by a revised Business Case Analysis.

14.2 Program Office Changes: In event modification to this PA or an IA is required resulting from a change in public law, program requirement, or policy, the Program Office will:

14.2.1 Promptly inform other Parties of any such change.

14.2.2 Consult with other Parties concerning potential impacts on ALC workload(s) and prime contract performance.

14.2.3 Enter into good faith negotiations to achieve an equitable mutual agreement on a modification to implement the change.

14.3 Failure to Agree: If the parties are unable to agree to a mutually acceptable change to this Agreement and/or an IA, such failure to agree shall be resolved under Article 15, Resolution of Disputes and Disagreements.

ARTICLE 15 – RESOLUTION OF DISPUTES AND DISAGREEMENTS

15.1 Prevention: Both parties are committed to a disputes-prevention atmosphere during the performance of this PA and related IAs. The parties agree their best efforts will be made to settle all controversies at the lowest level possible through direct negotiations between authorized individuals acting for each party.

15.2 Process: Any dispute between the parties arising under this PA or related IAs shall be diligently negotiated between the parties at the lowest level possible. In the event lower level resolution is not possible, the dispute shall be elevated through the management chain of each party to the level of the executive administrators. In the event executive administrators are not able to resolve a dispute, the parties shall seek resolution through appropriate alternate dispute resolution (ADR) means. In the event the parties are not able to resolve the matter

Comment [jlw25]: If a lease agreement is intended to be part of a PA (as an IA) then language must be included throughout the PA that addresses Leases. The language may reference the IA as the source for detailed information related to the lease. However, general language must be included in the PA that indicates a lease is envisioned and what the parties agree to in relation to that lease.

A future version of the guidebook may provide more mandatory language concerning leases as part of PAs.

through ADR, either or both parties may resort to whatever legal means they deem appropriate.

15.3 Costs: Each party to the dispute will bear all of its own costs incurred in executing this disputes process.

15.4 Duty to Proceed: Unless directed by a stop work order from the AnyCompany ABC Company, the ALC will continue to perform the work while the dispute in question proceeds through the disputes process outlined herein as long as adequate advance funding is available. Such continuing performance will be subject to any determination of the existence of a public exigency or mission priority, made upon the sole discretion of the ALC/CC. Specific procedures relating to the issuance and receipt of a stop work order are addressed in Article 3 Term and Termination.

ARTICLE 16 – NONDISCLOSURE OF PROPRIETARY/SENSITIVE INFORMATION

16.1 Protection: Each party agrees to protect proprietary and/or sensitive information relative to partnering discussions and activities as detailed in appendix C. This information includes, but is not limited to, collaborative business arrangements, data, interpretations, forecasts, projections, records and studies. Certain information, disclosed verbally, may be proprietary/sensitive in nature. Each party shall clearly identify, at the time of disclosure, the proprietary or sensitive nature of the information.

16.2 Notification of Loss or Inadvertent Disclosure: Each Party agrees to promptly notify the other Party of the loss or inadvertent disclosure of any Proprietary Information and Materials or Confidential Commercial Information. Neither Party shall be liable for the inadvertent disclosure of such information to a third party if it is disclosed despite the exercise of the same degree of care as the receiving Party utilizes to safeguard its own similar information, and in any event not less than reasonable care; provided, that the Party who inadvertently disclosed promptly notifies the furnishing Party, takes all reasonable steps to retrieve the inadvertently disclosed information, immediately takes steps to preclude further disclosure, and assists the furnishing Party in taking such steps. However, such inadvertent disclosure does not relieve either Party from its continued adherence to this Article.

ARTICLE 17 – AUDIT AND OVERSIGHT

- 17.1 Audit and Oversight Relationship:** The ALC, as a government organization, is not subject to the private sector partner's oversight or audits. The ALC is subject to oversight and audit directly by the GAO, DoD, Air Force and other government agencies. This Agreement and its related IAs will not create a direct right of the private sector partner to audit the ALC or its books and records. The methods and degree of reporting and insight into an ALC's schedule progress and technical performance, as well as cost- incurred data and overrun notification for cost-type efforts, will be as specified in each IA.
- 17.2 Customer Audit and Oversight:** In order to ensure that the AnyCompany ABC Company will meet the audit and record requirements of its prime contract and that the Government will be able to properly exercise its audit and oversight roles with respect to the F-XX Program, the Parties agree that the ALC will retain records of its cost information and performance under this PA and IAs issued hereunder in a manner and for a period consistent with its normal policies.

Comment [jlw26]: Detail the period of time to retain records or specifically reference the policy letter(s) that specify periods of time.

ARTICLE 18 – ASSIGNMENT

- 18.1 Transfer of Rights:** Except as otherwise expressly provided herein, the Private Parties to this PA may not assign or transfer its interest hereunder, or delegate the duties associated with such an assignment or transfer, without the prior written consent of the Government, which consent shall not be unreasonably withheld. While a Private Party may assign this PA and the IAs performed under this PA, to an entity that acquires all, or substantially all, of its assets related to that part of the Private party's business, there must be a simultaneous assignment of a private party's interest in the underlying prime Government contract, in accordance with the terms and conditions of the prime contract. For the purposes of this Article, assignment or transfer includes reorganization, consolidation, or reassignment of work responsibilities between or within Government entities. While the Private Parties cannot object to such an action taken by the Government acting in its sovereign capacity, the Government will advise the private parties to this PA of any such action impacting this PA that may occur as soon as is practical or permitted by law.
- 18.2 Novation:** Subject to any required governmental licensing approvals or restriction, either party may, with written notification to the other party, assign or novate its rights and/or obligations hereunder to (a) its parent company, if any; (b) any successor corporation in the event of change in corporate name, merger or consolidation of its parent or itself; or (c) a wholly owned subsidiary of its parent or itself.

ARTICLE 19 – ORDER OF PRECEDENCE

- 19.1 Agreements:** In the event of any inconsistency between the Statement of Work (SOW), PA and the IA, the following order of precedence shall apply:

Comment [jlw27]: HQ AFMC PK removed the term "Prime Contract" from this section as a result of a determination that placing the Prime Contract at the top of the precedence ladder implied flow down of the contractual clauses. Therefore, PK recommended replacing "Prime Contract" with the SOW.

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1. Statement of Work (greatest precedence)
2. PA terms and conditions and appendices thereto
3. IA terms and conditions
4. IA documents/attachments

19.2 Workload: The ALC will execute all workload priorities based on military necessity. The re-ordering of priorities for repair and overhaul is a potential risk factor for the private sector partner in the partnering relationship, the financial impact of which must be addressed by the private sector partner/prime contractor in the prime contract.

ARTICLE 20 – NOTICES

20.1 All notices, certificates, acknowledgments and other reports hereunder, shall be in writing and shall be deemed properly delivered when duly mailed/e-mailed and receipt is acknowledged by the other party at its address as follows, or to such other address as either party may, by written notice, designate to the other:

Air Logistics Center	Private Sector Partner
Any Air Logistics Center	AnyCompany ABC Company
Director of Plans and Programs	Attn: Minnie Pearl
Attn: XP (Joe Schmoe)	6801 Rockledge Dr
7981 Georgia St.	Bethesda, MD 20817
Hill AFB, UT 84056-5824	

ARTICLE 21 – PUBLICITY AND NEWS RELEASES

21.1 Coordination: Any formal news release, public announcement, advertisement, or publicity released by either party concerning this PA, in addition to any proposals, any resultant contract, or any IAs or other subsidiary documents or processes hereunder, will be coordinated with the other party prior to release or publication.

21.2 Exceptions: The Parties recognize that they cannot control news releases or publicity by the Customer, but agree to exercise their best efforts individually and collectively to ensure the accuracy and fairness of information contained in any such Customer publicity.

APPENDIX A

Statutory and Regulatory Provisions Relevant to Depot Maintenance Partnerships

(Not an exhaustive list, nor a complete summary of the content of each provision – descriptions focus only on primary aspects of each that apply or are relevant to depot maintenance)

Authority	Description
10 U.S.C. 2208(j)	Permits depot financed through working capital funds to <i>sell articles and services</i> outside DoD if the purchaser is fulfilling a DoD contract and the contract is awarded pursuant to a public-private competition.
10 U.S.C. 2464	Mandates DoD establish core logistics workload capabilities necessary to maintain and repair mission-essential weapon systems.
10 U.S.C. 2466	Requires a minimum of 50 percent of FY funding be used for performance of depot-level maintenance and repair by DoD employees. Conversely, not more than 50 percent of the funds may be used to contract for performance by non-Federal Government personnel.
10 U.S.C. 2469a	Requires competitive contracting (and authorizes public-private competition and teaming) when outsourcing workloads formerly performed at depots that have been closed or realigned (<i>BRAC</i>).
10 U.S.C. 2474	Requires the Military Departments to designate depot maintenance activities as Centers of Industrial and Technical Excellence (CITEs), authorizes and encourages public-private partnerships, permits performance of work related to core competencies, permits use of facilities and equipment, and permits <i>sales proceeds</i> from public-private partnerships to be credited to depot accounts.
10 U.S.C. 2539b	Authorizes the <i>sale of services</i> for testing of materials, equipment, models, computer software, and other items.
10 U.S.C. 2563 (formerly 10 U.S.C. 2553)	Authorizes <i>sale of articles or services</i> outside DoD (excluding those authorized under 10 U.S.C. 4543) under specified conditions.
10 U.S.C. 2667	Allows <i>leasing</i> of non-excess facilities and equipment.
22 U.S.C. 2278	Regulates <i>Arms Export Controls</i> on weapon systems between the U.S. and foreign companies.
22 U.S.C. 2754	Allows <i>sales or lease of articles or services to friendly countries</i> under specified conditions.
22 U.S.C. 2770	Allows <i>sales of articles and services</i> to a U.S. company for incorporation into end items to be sold to a friendly foreign country or international organization under specific conditions.
FAR 45.3	Permits provision of <i>government-furnished material, facilities and equipment</i> to contractors in support of a government prime contract.

APPENDIX B

Definitions

Core Capability: Skills and resources maintained within organic repair depots to meet contingency requirements. Core comprises a minimum level of mission-essential capability either under the control of the individual DOD component or a consolidated capability under the control of a jointly determined DOD component where economic and/or strategic considerations warrant. [source Draft AFI 63-101, 2008]

Core competencies: Those core logistics-related depot-level maintenance capabilities that serve as the Department's necessary ready and controlled source of technical ability, expertise, and resources as required by section 2464 of Reference (c). Core competencies are the set of depot-level maintenance capabilities necessary to enable the Armed Forces to fulfill the strategic and contingency plans prepared by the Joint Chiefs of Staff and for which the Military Departments believe the Department of Defense should be a recognized leader in the national technology and industrial base. Core competencies ensure that DoD depot-level maintenance activities are prepared to and actually do execute depot-level maintenance in an effective, efficient, and timely manner. [source DoDI 4151.21]

Depot-level maintenance: Material maintenance or repair requiring the overhaul, upgrading, or rebuilding of parts, assemblies, or subassemblies, and the testing and reclamation of equipment as necessary, regardless of the source of funds for the maintenance or repair or the location at which the maintenance or repair is performed.

The term includes (1) all aspects of software maintenance classified by the Department of Defense as of July 1, 1995, as depot-level maintenance and repair, and (2) interim contractor support or contractor logistics support (or any similar contractor support), to the extent that such support is for the performance of services described in the preceding sentence.

Exceptions.--(1) The term does not include the procurement of major modifications or upgrades of weapon systems that are designed to improve program performance or the nuclear refueling of an aircraft carrier. A major upgrade program covered by this exception could continue to be performed by private or public sector activities. (2) The term also does not include the procurement of parts for safety modifications. However, the term does include the installation of parts for that purpose. [source 10USC Section 2460]

Depot-level maintenance activity: A specific DoD-owned and DoD-operated facility established, equipped, and staffed to carry out depot-level maintenance. DoD depot-level maintenance activities accomplish a wide range of depot-level maintenance processes including overhaul, conversion, activation, inactivation, renovation, analytical rework, repair, modifications and upgrades, inspection, manufacturing, reclamation, storage, software support, calibration, and technical assistance. Field-level maintenance sites authorized to accomplish a specific depot-level repair or a

narrow range of such repairs or maintenance are not depot-level maintenance activities. [source DoDI 4151.21]

Depot Maintenance Capability: The aggregation of all resources required to perform depot maintenance. These resources include facilities, skilled personnel, tools, test equipment, drawings, technical publications, ongoing training, maintenance personnel, engineering support, and spare parts. [source Draft AFI 63-101, 2008]

Direct Sale Agreement (DSA): When an AF program office receives funding from the customer and passes it directly to a vendor who subcontracts the workload and provides funds to the depot performing the workload. [source Draft AFI 63-101, 2008]

End Item: Final combination of assemblies, components, parts, and materiel that performs a complete operational function and needs no further augmentation to make it ready for its intended use. [source Draft AFI 63-101, 2008]

Organic: Logistics support provided by Government-owned material/ equipment/ facilities and Government personnel. [source Draft AFI 63-101, 2008]

Program: Systems, subsystems, end items, services, or activities on the Air Force Acquisition Program Master List (APML), Sustainment Program Master List (SPML), weapon systems designated in AFPD 10-9 (Lead Command Designation and Responsibilities for Weapon Systems), or identified as Services Category activities. [source Draft AFI 63-101, 2008]

Program Manager (PM): The DODD 5000.1 designated individual with responsibility for and authority to accomplish program objectives for development, production, and sustainment to meet the user's operational needs. PM for sub-systems shall support overall system objectives as required by the SPM. The PM for acquisition programs shall be accountable for credible cost, schedule, performance, and materiel readiness to the MDA. ACAT I and ACAT II PM shall be chartered by the SAE and the PEO. Delegated ACAT II and III PM shall be chartered by the PEO. The PM for sustainment programs shall be accountable for credible cost, schedule, performance, and materiel readiness to the AFMC/CC or designee. [source Draft AFI 63-101, 2008]

Public-Private Partnership (PPP): A logistics sustainment philosophy involving a cooperative agreement between DOD and private sector entities. A PPP for depot maintenance is an agreement between one or more organic depot maintenance activities (includes geographically separated organizations/units of a depot/center), one or more private industry entities, and may also include the buying authority (e.g. PM or PGM), to perform work or utilize facilities and equipment. [source Draft AFI 63-101, 2008]

Software Maintenance: Those activities necessary to correct errors in the software; add incremental capability improvements (or delete unneeded features) through software changes; and adapt software to retain compatibility with hardware or with other systems with which the software interfaces. Software maintenance comprises software maintenance performed on military materiel (e.g. weapon systems and their components, space control systems and their components, automated test equipment and test package sets, and systems integration laboratories). [source Draft AFI 63-101, 2008]

Stakeholders: Individual or organizational entities (users, developers, acquirers, technologists, testers, budgeters, sustainers, and industry) that are, or will be, associated with implementing and supporting the associated system, subsystem, or end-item capability requirements. [source Draft AFI 63-101, 2008]

Supply Chain Management: Strategy for integrated life cycle management (ILCM) enterprise sustainment that integrates acquisition of assets, supply, maintenance, and distribution functions with the physical, financial, information, and communications networks in a results-oriented approach to satisfy materiel requirements. [source Draft AFI 63-101, 2008]

Supportability: The degree to which the planned logistics support allows the system to meet its availability and wartime usage requirements. Planned logistics support includes the following: test, measurement, and diagnostic equipment; spare and repair parts; technical data; support facilities; transportation requirements; training; manpower; and software. [source Draft AFI 63-101, 2008]

Sustainment: Continuing materiel support which consists of the planning, programming, and execution of a logistics support strategy for a system, subsystem, or major end item to maintain operational capabilities from system fielding through disposal. [source Draft AFI 63-101, 2008]

System: Any organized assembly of resources and procedures united and regulated by interaction or interdependence to perform a set of specific functions. [source Draft AFI 63-101, 2008]

System Program Manager (SPM): In accordance with DODD 5000.1, the SPM is the Air Force designated individual with responsibility for and authority to accomplish system objectives for development, production, and sustainment to meet the user's operational needs. SPM assignments are based upon the APML, SPML, and AFD 10-9 (Lead Command Designation and Responsibilities for Weapon Systems) designated weapon systems. For systems in acquisition, the SPM is accountable for credible cost, schedule, performance, and materiel readiness to the MDA. ACAT I and ACAT II SPM will be chartered by the SAE and the PEO. Delegated ACAT II and III SPM shall be chartered by the PEO. For systems in sustainment, the SPM is accountable for credible cost, schedule, performance, and materiel readiness to the AFMC/CC, AFSPC/CC, or designee. [source Draft AFI 63-101, 2008]

System Sustainment Manager (SSM): The individual normally at a logistics center with functional responsibility for the sustainment portion of a system's life cycle in support of a PM. [source Draft AFI 63-101, 2008]

Technical Data: Information, regardless of the form or method of the recording, of a scientific or technical nature, including computer software documentation. It includes information required for the design, development, production, manufacture, assembly, operation, training, testing, repair, maintenance, or modification of defense articles. Relative to software it includes information on system functional design, logic flow, algorithms, application programs, operating systems, and support software for design, implementation, test operation, diagnosis, and repair. It does not include computer software or data incidental to contract administration or general scientific, mathematical, or engineering principles commonly taught in schools, or information in the public domain. [source AFI 63-101]

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Warfighter: An individual or organization who executes military force or is responsible for making operational decisions that result in the use of military force. The term includes field level personnel assigned to an Air and Space Expeditionary Force (AEF) whose duties support USAF core competencies and distinctive capabilities. [source Draft AFI 63-101, 2008]

Weapon System: A combination of elements that function together to produce the capabilities required for fulfilling a mission need, including hardware, equipment, software, and all performance based logistics (PBL) sustainment elements, but excluding construction or other improvements to real property. [source Draft AFI 63-101, 2008]

Work-Share Agreement (WSA): When the AF program office receives funding from the customer and passes it directly to the depot performing the workload. [source Draft AFI 63-101, 2008]

Workload Shift: The change of an officially designated postured workload from organic repair to contract repairs or vice versa. It also includes the change of a previously postured workload from one organic source to another. Not included are changes in previously postured contract workloads from one contract source to another, combining several permanently postured contract workloads into fewer contracts, or current contract workloads that are broken out to several contract sources. [source Draft AFI 63-101, 2008]

APPENDIX C

Proprietary Information Disclosure Agreement

Comment [w28]: AFMC likes the idea of referencing the proprietary information disclosure agreement in an appendix and then detailing it to the IA if special conditions apply.

Effective Date:

1. The parties to this Agreement are:

Ogden Air Logistics Center
Director of Plans and Programs

7981 Georgia St.
Hill AFB, UT 84056-5824

Lockheed Martin Corporation
Vice President & Managing Director,
Focused Logistics
6801 Rockledge Dr
Bethesda, MD 20817

2. The proprietary information controlled by this Agreement relates to partnering discussions and activities between the parties.
3. The proprietary information will be disclosed by: All Parties ☒
4. The term of this Agreement shall be for a period that corresponds to that of the associated Partnering Agreement. This period may be extended by a mutual written agreement of the parties. At the termination of this Agreement, all materials exchanged by the parties hereunder shall be returned or handled according to disposition instructions provided by the owner of the materials.
5. A recipient of proprietary information disclosed under this Agreement shall not use said information except for the purpose of furthering the collaborative business arrangement under the attached Agreement. This may include preparing bids and proposals, developing plans, and performing workloads within the scope of the attached Agreement and/or specifically identified under authorized Implementation Agreements (IAs).
6. Proprietary information may include, by way of example, but without limitation, data, know-how, formula, processes, designs, sketches, photographs, plans, drawings, specifications, samples, reports, customer lists, pricing information, studies, findings, inventions and ideas. To the extent practical, proprietary information shall be disclosed in documentary or tangible form marked "proprietary" or "confidential." In the case of disclosure in non-documentary form made orally or by visual inspection, the discloser shall confirm in writing the fact and general nature of each disclosure within 20 days of making the disclosure. Each representative designated by the parties for receiving and disclosing proprietary information shall make all arrangements for his party and be informed of all communications relating to this

Agreement. Any change of representative shall be made only upon written notice to the other party to this Agreement. The amount of proprietary information to be disclosed is completely within the discretion of the discloser but should be no less than what is required to accomplish the purposes for which the information is disclosed. The recipient of proprietary information shall exercise reasonable care to prevent its disclosure to any third party, which shall not be less than the care the recipient affords its own proprietary information. The recipient shall limit internal dissemination of proprietary information within its own organization to its employees whose duties justify the need to know such information, and then only provided that there is a clear understanding by such individuals of their obligation to maintain the trade secret status of such information and to restrict its use solely to the purpose specified herein. No other right or license to use proprietary information is granted hereby.

7. The recipient of proprietary information shall be under no obligation with respect to any information: (a) which is, at the time of disclosure, available to the general public; or (b) which becomes at a later date available to the general public through no fault of the recipient and then only after said later date; or (c) which recipient can demonstrate was in its possession before receipt; or (d) which is disclosed to recipient without restriction on disclosure by a third party who has the lawful right to disclose such information; or (e) information which is independently developed by recipient without direct or indirect reference to the disclosing party's proprietary information.
8. Technical data as defined in the International Traffic in Arms Regulation (22 CFR Parts 120 - 130 et. seq.) or technology as defined in the Export Administration Regulations (15 CFR Parts 730 - 774 et. seq.) of the United States may be provided to the participant by the disclosing party under this Agreement. Such technical data or technology provided to the participant is authorized by the U.S. Government for export to the participant only and may not be transferred, transshipped on a non-continuous voyage, or otherwise be disposed of in any other country, either in its original form or after being incorporated into other end items, without the prior written approval of the U.S. Department of State or U.S. Department of Commerce as applicable. Each party agrees to indemnify the other for all claims, demands, damages, costs, fines, penalties and other expenses arising from that party's failure to comply with this clause and applicable statutes and regulations.
9. In order to induce disclosures of proprietary information, Private Sector Partner and AA-ALC agree to the conditions set forth in this Agreement.
10. No Licenses or Warranties - Neither this Agreement nor any disclosure of Proprietary Information shall be construed, directly or indirectly or by implication estoppel or otherwise, to offer or grant to Recipient rights in or license under any present or future Proprietary Information, patent or copyright.
11. The discloser provides proprietary information on an "as is" basis. Nothing in this Agreement shall be construed as a warranty, representation, assurance, guarantee or inducement with respect to the content or accuracy of documents and Proprietary

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Information transmitted or exchanged under this Agreement. The discloser will not be liable for any damages arising out of use of Proprietary Information. Disclosure of proprietary information containing business plans is for planning purposes only. Therefore, such information is at the recipient's own risk.

APPENDIX D

Partnership Agreement Organizational Points of Contact

Organization Name	Org Phone	Point(s) of Contact	Phone	E-Mail	Notes

Comment [w29]: AFMC likes the idea of referencing the proprietary information disclosure agreement in an appendix and then detailing it to the IA if special conditions apply.